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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR  
PROTECTION CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF  
INVESTMENT SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC, and  
Bernard L. Madoff,

Plaintiff,

v.

THE PUBLIC INSTITUTION FOR  
SOCIAL SECURITY,

Defendant.

Adv. Pro. No. 12-01002 (CGM)

**DEFENDANT THE PUBLIC INSTITUTION FOR SOCIAL SECURITY'S  
DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF ISSUES**

Pursuant to Federal Rule of Bankruptcy Procedure 8009(a)(1) and Local Rule 8009-1, Defendant The Public Institution for Social Security (“PIFSS”) submits this designation of items to be included in the record on appeal and statement of issues with respect to the appeal docketed in the United States District Court for the Southern District of New York (“District Court”) at Civil Action No. 1:22-cv-08741.

### **1. Designation of Record on Appeal**

PIFSS designates the following items to be included in the record on appeal. Each designated item shall also include any and all exhibits and documents annexed to and/or referenced within such items.

<b>Date</b>	<b>Docket Entry<sup>1</sup></b>	<b>Description</b>
01/05/2012	1 (Entries: 1-1 – 1-3)	Adversary Complaint with Exhibits A–C
02/25/2022	116	PIFSS’ Motion to Dismiss the Complaint
02/25/2022	117 (Entries: 117-1 – 117-10)	Declaration of Leo Muchnik in Support of PIFSS’ Motion to Dismiss with Exhibits 1–10
02/25/2022	118	PIFSS’ Memorandum of Law in Support of its Motion to Dismiss
04/26/2022	122	Trustee Irving H. Picard’s Memorandum of Law in Opposition to PIFSS’ Motion to Dismiss
04/26/2022	123 (Entries: 123-1 – 123-13)	Declaration of Brian W. Song in Opposition to PIFSS’ Motion to Dismiss with Exhibits 1–13

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<sup>1</sup> These docket entries refer to filings in Adversary Proceeding No. 12-01002.

Date	Docket Entry <sup>1</sup>	Description
05/26/2022	128	PIFSS' Reply in Support of its Motion to Dismiss
07/20/2022	143	Transcript of Hearing held on July 13, 2022 on PIFSS' Motion to Dismiss
08/17/2022	149	Memorandum Decision Denying PIFSS' Motion to Dismiss
09/01/2022	150	Order Denying PIFSS' Motion to Dismiss
10/06/2022	154 (Entries: 154-1 – 154-4)	PIFSS' Notice of Appeal with Exhibits A and B, Civil Cover Sheet, and Related Case Statement

## 2. Statement of Issues

1. Whether the Bankruptcy Court erred in holding that it had subject matter jurisdiction pursuant to the third clause of the commercial activity exception of the Foreign Sovereign Immunities Act.

2. Whether the Bankruptcy Court erred in holding that PIFSS is subject to personal jurisdiction in the United States.

3. Whether the Bankruptcy Court erred in interpreting the District Court's decision in *In re Madoff Sec.*, 2013 WL 1609154 (S.D.N.Y. Apr. 15, 2013), referred to in PIFSS' briefing as "*Cohmad*," as barring a subsequent transferee from asserting a Section 546(e) defense if the initial transferee is alleged to have had actual knowledge of Bernard L. Madoff's fraud, even though the subsequent transferee is not alleged to have had such knowledge and/or where the initial transfer was on

account of a separate securities contract between the initial and subsequent transferees.

PIFSS reserves the right to supplement or amend the statement of issues to be presented on appeal and to designate additional items for inclusion in the record on appeal.

Dated: October 20, 2022  
New York, New York

**GREENBERG TRAURIG, LLP**

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